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Public Prosecutor v Gunasekaran a/l Arjunan & Anor

B HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 45–39 OF 2003
KN SEGARA J
21 JULY 2006

C *Criminal Procedure — Sentence — Culpable homicide not amounting to murder — Victim attacked brutally, without provocation and without retaliation — Whether imposition of severe punishment upon accused warranted — Effect of mitigating factors upon sentence*

D *Criminal Procedure — Sentence — The public interest — Violent crime — Whether severe punishment justified*

E Both the accused pleaded guilty to an alternative charge of culpable homicide not amounting to murder pursuant to s 304(a) of the Penal Code. The facts of the case showed that the victim was attacked unprovoked, in a vicious manner and was unable to retaliate. The victim suffered 21 stab wounds to his body. The attack was a premeditated attack by the second accused. Both accused appealed for leniency. In mitigation they submitted that they had aged parents and families to support. F They also had other responsibilities to shoulder.

Held, convicting both accused and sentencing them to 20 years' imprisonment:

G (1) A plea of guilty does not automatically take away the discretion of the court to impose the maximum sentence provided for an offence. Public interest is paramount and violent crimes affecting the human body resulting in death committed with a degree of premeditation, without any cause by the victim, must be met with the severest punishment provided by law (see para 9).

H (2) The appropriate sentence in every case, whether the accused had pleaded guilty or otherwise, must be determined entirely on the peculiar facts of the case, after taking into consideration public interest, as paramount, at all times, bearing in mind current needs and demands of State, society, and individuals for realistic punishment and rehabilitation of offenders who have no respect for law or I human life (see para 10).

(3) The fact that both the accused have aged parents and families to support, with responsibilities to shoulder, is not a mitigating factor for a crime of violence resulting in death. Both accused ought to have been fully aware of the consequences of their acts when they committed the offence (see para 11).

[Bahasa Malaysia summary

Kedua-dua tertuduh mengaku bersalah kepada satu pertuduhan alternatif kesalahan homisid salah yang tidak berjumlah kepada pembunuhan menurut s 304(a) Kanun Keseksaan. Fakta kes menunjukkan bahawa mangsa telah diserang tanpa diganggu, secara ganas dan tidak dapat melawan. Mangsa mengalami 21 luka tikaman pada badannya. Serangan itu satu serangan yang dirancang oleh tertuduh kedua. Kedua-dua tertuduh telah merayu untuk hukuman ringan. Dalam mitigasi mereka berhujah bahawa mereka mempunyai ibubapa yang berumur dan mempunyai keluarga untuk disara. Mereka juga mempunyai tanggungjawab lain untuk dipikul.

Diputuskan, menyabitkan kedua-dua tertuduh dan menjatuhkan hukuman 20 tahun penjara:

(1) Satu pengakuan bersalah tidak secara automatik mengambil budi bicara mahkamah untuk mengenakan hukuman maksimum yang diperuntukkan untuk suatu kesalahan. Kepentingan awam patut diutamakan dan jenayah kejam yang melibatkan badan manusia sehingga mengakibatkan kematian dilakukan dan terdapat perancangan sebelumnya, tanpa apa-apa sebab oleh mangsa, hendaklah diberikan hukuman seberat-beratnya diperuntukkan oleh undang-undang (lihat perenggan 9).

(2) Hukuman sesuai dalam setiap kes, sama ada tertuduh telah mengaku bersalah atau sebaliknya, hendaklah ditentukan keseluruhannya berdasarkan fakta tertentu kes itu, setelah mengambilkira kepentingan awam, sebagai suatu yang diutamakan, pada setiap masa, dengan mengambilkira keperluan dan tuntutan semasa Kerajaan, masyarakat, dan individu untuk hukuman realistik dan pemulihan pesalah-pesalah yang tiada rasa hormat terhadap undang-undang ataupun kehidupan manusia (lihat perenggan 10).

(3) Hakikat bahawa kedua-dua tertuduh mempunyai ibubapa yang berumur dan keluarga untuk disara, dengan tanggungjawab untuk dipikul, bukan faktor mitigasi untuk jenayah ganas yang mengakibatkan kematian. Kedua-dua tertuduh patut sedar tentang akibat tindakan mereka apabila mereka melakukan kesalahan itu (lihat perenggan 11).]

Notes

For a case on culpable homicide not amounting to murder, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 3341.

Legislation referred to

Penal Code ss 34, 302, 304(a)

Wan Shaharuddin bin Wan Ladin (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.
G Ramachandran (G. Ram & Associates) for the first accused.
Ghazali Taib (Jihan Ghazali & Co) for the second accused.

KN Segara J:

[1] The first accused and second accused were originally charged for the offence of murder under s 302 Penal Code read together with s 34 of the said Code, in causing the death of one Balu A/L Subramaniam on 20 January 2003 between 4pm and 6pm (see exh P2). Both the accused claimed trial to the said charge. However, subsequently, the prosecution tendered an alternative charge under s 304(a) Penal Code, and both the accused pleaded guilty to the said charge (see exh P3).

[2] Both the accused were represented by counsel. The accused understood the nature and consequences of their plea of guilty to the alternative charge. They maintained their plea of guilty even after the court explained to them that the court could impose the maximum sentence of 20 years imprisonment, notwithstanding their plea of guilty if the facts so warranted, in the event the court was satisfied that there were no mitigating factors sufficient to warrant anything less than the maximum sentence for the offence.

[3] The facts tendered by the learned DPP were as follows (see exh P4):

> Pada jam lebihkurang 1.30 petang 20 Januari 2003, OKT 1, OKT 2 dan Balu a/l Subramaniam (selepas ini dirujuk sebagai 'SI MATI') telah pergi minum arak bersama-sama di sebuah kedai makan di Kampung Sungai Ara, Damansara. Sambil minum mereka telah berbual-bual.
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> Pada jam 3.00 petang, OKT 2 telah bertengkar dengan si mati. OKT 2 telah menjadi begitu marah dengan si mati dan telah balik ke rumah OKT 2. Di rumahnya OKT 2 telah mengambil sebilah pisau untuk mencederakan si mati. OKT 2 kemudiannya telah menyelitkan pisau tersebut dicelah pinggang beliau.
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> OKT 2 kemudiannya telah pergi semula ke kedai tersebut. Si mati dan OKT 1 masih berada di sana ketika OKT 2 sampai di situ. OKT 2 telah mengajak si mati menaiki motosikal dengan alasan kononnya ingin berbincang pasal pertengkaran tadi. OKT 1, OKT 2 dan si mati telah menaiki satu motosikal bersama-sama. Motosikal telah dipandu oleh OKT 2 dan menuju ke sebuah kawasan semak berhampiran Kilang Sony di Jalan Tanjung Bandar Utama, Damansara, Petaling Jaya (selepas ini dirujuk sebagai 'TEMPAT KEJADIAN'). Mereka telah sampai di kawasan itu pada jam 4.00 petang dan keadaan tempat itu agak sunyi.
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> Apabila sampai di tempat kejadian OKT 2 telah memberhentikan motosikalnya. OKT 2 terus menumbuk muka si mati dan OKT 2 telah mengarahkan OKT 1 untuk memegang si mati. OKT 1 kemudiannya telah memegang si mati dan OKT 2 telah mengeluarkan pisau yang dibawanya sebelum ini terus menikam si mati bertubi-tubi dari depan. Si mati terus rebah dengan badannya berlumuran darah.
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> Kemudian OKT 1 dan OKT 2 telah membuangkan si mati ke dalam kawasan belukar. Mereka kemudiannya telah beredar dari tempat kejadian.
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> Pada jam 2.45 pagi 21 Januari 2003, anggota di Balai Polis Damansara telah menerima panggilan telefon dari orang awam mengenai penemuan satu mayat di tempat kejadian.
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> Pihak polis telah pergi ke tempat kejadian dan telah menemui mayat si mati. Mayat si mati telah dibawa ke hospital. Mayat si mati telah dicamkan oleh isterinya bernama Amirtham a/p Veerasamy.

Bedah siasat telah dijalankan dan si mati telah disahkan mati akibat kesan tikaman berganda. Pemeriksaan juga mendapati 21 kesan tikaman yang mana konsisten dengan tikaman oleh sebilah pisau. Diantara tikaman tersebut telah menembusi hati, perut, paru-paru dan dada si mati.

OKT 1 telah ditangkap pada jam 5.00 pagi 21 Januari 2003 di rumahnya. OKT 2 telah ditangkap pada jam 5.20 pagi 21 Januari 2003 di rumahnya dan setelah soal-siasat pihak polis telah menemui sebilah pisau yang mempunyai kesan darah.

Pisau tersebut telah dihantar ke Jabatan Kimia Malaysia dan telah disahkan oleh ahli Kimia mempunyai kesan darah manusia. Darah tersebut juga mempunyai profil DNA yang sama dengan profil DNA darah si mati.

Sebab kematian si mati telah disahkan akibat multiple stab wounds.

[4] Both the accused admitted the facts that were read and explained to them. The learned DPP also tendered the chemist report, the post-mortem report and the knife that was used to stab the deceased. Both the accused admitted the said exhibits.

[5] The court was entirely satisfied, on the facts tendered to the court, that both the accused were guilty of the alternative charge, and were accordingly convicted on the alternative charge, on their own plea of guilty.

[6] After considering the plea in mitigation by the respective counsel for the first and second accused, and the submission of the learned DPP on sentence, the court sentenced both the accused to the maximum sentence of 20 years imprisonment from the date of arrest (21 January 2003).

[7] The facts of the case clearly show that both the accused intended to cause the death of the deceased, Balu a/l Subramaniam. The deceased was helpless and was not able to put up any defence to the vicious repeated stabs with the knife, exh P7, by the second accused. The deceased could not even run for his life because he was firmly restrained by the first accused. The post-mortem report, exh P6, shows that there were 21 stab wounds. They were all incised stab wounds and most of the stab wounds were found penetrating into the chest and abdominal cavities. No defence wounds were found. The cause of death was the multiple stab wounds.

[8] The facts of the case further reveal that the attack on the deceased was a premeditated attack by the second accused. Although the first accused may not have planned the attack on the deceased, the facts show that the role played by him in holding the deceased firmly, to enable the second accused to carry out his pre-planned dastardly attack that was totally disproportionate to any cause for vengeance on the deceased, places equal responsibility on the shoulders of the first accused for the death of the deceased. The first accused did nothing to ensure that the second accused did not stab the deceased with the knife, after the second accused had first punched the deceased's face, before launching his attack with the knife he had brought along with him, concealed at his waist, obviously for the specific purpose of stabbing the deceased to death. The facts show that there was no provocation or retaliation from the deceased right from the time the first and second accused had met up with the deceased at a food outlet for drinks and till the time the second

accused lured the deceased on his motorcycle, together with the first accused, to a deserted spot of undergrowth near a electronic factory (Kilang SONY) at Jalan Tanjung Bandar Utama, Damansara, Petaling Jaya.

[9] A plea of guilty does not automatically take away the discretion of any court to impose the maximum sentence provided for the said offence under the law. Accused and counsel should not delude themselves into thinking that a plea of guilty entitles an offender, a legal right to a sentence lesser than the maximum. Public interest is paramount and violent crimes affecting the human body resulting in death committed with a degree of premeditation, without any cause by the deceased to have such a fate fall upon him, must be met with the severest punishment provided by the law.

[10] The Courts of Justice are not market places. The word 'discount', in relation to sentences, upon a plea of guilty, should not be used indiscriminately, as it gives the impression that the accused can 'bargain' over his sentence, as one bargains over a price at a market place. The threat of inconvenience to the court by a prolonged trial and expense, in the event the court does not accede to pass a particular sentence or a sentence lesser than the maximum, upon a plea of guilty, should never prevail. The appropriate sentence in every case, whether the accused has pleaded guilty or otherwise, must be determined entirely on the peculiar facts of the case, after taking into consideration public interest, as paramount, at all times, bearing in mind current needs and demands of State, society, and individuals for realistic punishment and rehabilitation of offenders who have no respect for the law or human life.

[11] The first and second accused's respective plea for leniency is without merits. The fact the accused have aged parents and families to support, with responsibilities to shoulder, is not a mitigating factor for a crime of violence resulting in death. The accused ought to have been fully aware of the consequences of their acts when they committed the offence. The accused should consider themselves lucky that they have been spared the gallows by the prosecution offering the alternative charge. Both the accused are sentenced to 20 years imprisonment from the date of their arrest.

Both accused convicted and sentend to 20 years imprisonment.

Reported by John Paul Simon